

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 455 of 1999

to

FIRST APPEAL No 458 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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SPECIAL LAND ACQUISITION OFFICER

Versus

RATANSINH ANOPSING PARMAR

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Appearance:

Mr D P Joshi, AGP for Petitioners

MR KM SHETH for Respondent No. 1

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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 17/08/1999

ORAL (COMMON) JUDGEMENT

Admit. Mr K M Sheth, learned Advocate waives service of notice of admission on behalf of the respondent No.1.

By consent of the learned Advocates for the parties, this group of appeals is finally heard and disposed of today. The learned Advocates have produced necessary documents and evidence for the purpose of deciding these appeals.

As common questions of facts and law involved in this group of First Appeal, they are disposed of by this common judgment.

2. The appellants have challenged the common judgment and award dated January 9, 1998 passed by the learned Extra Assistant Judge, Panchmahals at Godhra rendered in Land Reference Cases No.106/93 to 109/93 under section 54 of the Land Acquisition Act, 1894 (for short 'the Act'), read with section 96 of the Code of Civil Procedure, 1908.

3. The agricultural lands of village Kanjari, Taluka Halol, District Panchmahals, came to be acquired for the public purpose i.e. for Narmada Main Canal Project by publication of notification under section 4(1) of the Act dated April 25, 1991 which was followed by section 6 of the Act. Persons interested i.e. the land owners of the acquired lands of village Kanjari filed their claim before the Land acquisition Officer claiming compensation at the rate of Rs. 20/- per sq.metre. The Land Acquisition Officer, on the basis of the materials placed before him, made his award on September 23, 1992 offering compensation at the rate of Rs. 1.80 paise per sq. metre for the acquired lands of village Kanjari.

4. The respondents were of the opinion that the compensation offered by the Land Acquisition Officer was inadequate, and therefore, they filed written application under section 18 of the Act before the Land Acquisition Officer to refer the applications to the District Court for determination of the market value of the acquired lands. The said applications were referred to the District Court at Panchmahals, which came to be numbered as Land Acquisition Reference Case No. 106/92 to 109/92. All the applications were consolidated and Land Acquisition Reference Case No.106/93 was treated as main Reference and evidence was led in that case. On behalf of the claimants, Udesinh Andersingh parmar was examined at Exh. 19. During the deposition, he produced previous award of the acquired lands of village Kanjari. He also deposed that the claimants of the acquired lands were raising crop of cotton, rice, tuver, wheat and millet and getting a net profit of Rs.5,000/- to Rs.7000/- per

Bigha. On behalf of the appellant, one Mr Krishnakant V Mehta, Chief Executive Engineer, Narmada Project was examined at Exh.21. In the cross-examination, the witness admitted that village Kanjari was having facilities of primary health centre and electricity and was connected by tar road with other towns and villages of District Panchmahals. He also admitted that other acquired lands which came to be acquired for the same purpose were having same fertility as compared to the acquired lands of village Kanjari. The appellant did not produce any documentary evidence. The Reference Court, on overall appreciation of oral as well as documentary evidence, determined the market value of the acquired lands of village Kanjari at the rate of Rs.18/- per sq. metre. The Reference Court also extended the benefits of statutory provisions as contained under Sections 23(1-A) and 23(2) of the Act and amended provisions under Section 28 of the Act, which has given rise to filing of this group of appeals by the appellants.

5. Learned Advocate for the appellants have vehemently argued that the previous award relied on for determination of the market value of the acquired lands were not comparable and the Reference Court has erred in giving rise of 10% per annum every year for the purpose of determination of the market value of the acquired lands in absence of any other reliable evidence. It is further submitted by the learned AGP that the compensation determined by the Reference Court is highly excessive, and therefore, this appeal be admitted and allowed. The learned Advocate for the respondents has submitted that the compensation awarded is just and proper and the Reference Court has not committed any error in relying on previous award of the same village Kanjari. It is submitted that due to the acquisition of the lands for the Narmada Main Canal Project, there was heavy pressure on the lands of village Kanjari and the price of the lands had increased every year, and therefore, the Reference Court was justified in giving rise of 10% each year for the purpose of arriving at the market value of the acquired lands in the year 1991. It is submitted that just and reasonable compensation has been awarded by the Reference Court and the appeals be dismissed with costs.

6. None of the contentions raised by the learned Advocate for the appellants deserves any merit. It is settled legal principle that in absence of reliable evidence in the nature of sale transactions or opinion of experts, the Reference Court can rely on the previous

award if the lands of previous awards were comparable in nature and the notification of the previous awards were issued in the near proximity of time. In the present appeals, neither the appellant nor the respondent produced any documentary evidence in the nature of sale deed etc., and therefore, the Reference Court was justified in relying on previous award of the same village at Exh.14 which was of the learned Joint District Judge, Panchmahals at Godhra in Land Acquisition Reference cases No.305/89 to 308/89, 310/89 to 329/89. The lands of the same village Kanjari came to be acquired by notification dated September 11, 1986. The Reference Court had determined compensation of the acquired lands at the rate of Rs.13/- per sq. metre for the acquisition which had taken place in the year 1986. The previous award at Exh.16 which was in respect of the acquired lands in the same village Kanjari was rendered by the learned Extra Asstt. Judge, Panchmahals, Godhra on December 17, 1993 wherein the market value of the acquired lands of village Kanjari was determined at the rate of Rs. 13/- per sq. metre by the notification issued under section 4 of the Act dated October 4, 1984. Thus, it is evident that the market value of the agricultural lands of the same village was determined which came to be acquired in the year 1984 and 1986 was at the rate of Rs. 13/- per sq. metre. In the present appeal, notification under section 4(1) of the Act was published in the year 1991. The Reference Court was justified in giving rise to the market price at the rate of 10% per annum each year because there was heavy pressure of lands of village Kanjari due to acquisition of agricultural lands of the same village for different purposes. Merely because the acquisition of the lands was for different purpose, it cannot besaid that the Reference Court had not committed error in awarding the rise in the market price at 10% each year. Learned Advocate for the respondent also relied on the judgment of the Division Bench of this Court in FA No.2881 to 2891/95, wherein the Division Bench of this Court had determined the market value of the acquired lands of village Kanjari for the notification issued under section 4(1) of the Act on July 13, 1984 at the rate of Rs. 13/per sq. metre. Thus, it becomes evident that even in the year 1984, the market value of the lands of village Kanjari was determined by the Division Bench of this Court at the rate of Rs. 13/per sq. metre. In the present appeals, the notification under section 4(1) of the Act was issued in the year 1991. Therefore, the Reference Court was justified in giving rise of Rs.5/while determining the market value of the acquired lands of the present appeals as there was a gap of 7

years between the issuance of the notifications under section 4(1) of the Act.

7. The Supreme Court has laid down in various decisions that in absence of any other reliable evidence, the Court can place reliance on the earlier awards for determination of the market value of the acquired lands. The claimants cannot be non-suited as they had failed to lead documentary evidence in the nature of sale transactions or opinion of experts. The evidence of the claimants=witness clearly established that the present acquired lands were similarly situated with the acquired lands of the previous awards having similarly same fertility and of the same village Kanjari. Therefore, in my view, the reliance placed by the Reference Court on earlier awards for determination of the value of the present acquired lands cannot be called excessive or unjust. On the contrary, the Reference Court had awarded adequate and reaasonable compensation to the respondents for their acquired agricultural lands. The statutory benefits under the Act awarded to the respondent over and above the market value of the acquired lands are also just and proper and does not call for any interference.

8. As a result of the foregoing discussion, these appeals deserve to be dismissed being meritless. However, in the facts and circumstances of the case, there shall be no order as to costs.

9. The acquiring body is directed to deposit the amount of compensation as awarded by the Refernce Court within 12 weeks from the date of this judgment

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